IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 17671 of 2007(D)

{IN EP.636/2006 & EP.476/2007 IN
OS.392/2005 OF THE PRINCIPAL MUNSIFF'S COURT,
IRINJALAKUDA}

.....

PETITIONERS:

1. V.K. RAMADEVAN, AGED 70,
S/O. KUNJIVELAPPAN, VADAKKEDATHU HOUSE,
KATTOOR P.O., PIN-680 702.

2. V.R. SURAJ, AGED 32,
S/O. RAMADEVAN, VADAKKEDATHU HOUSE,
KATTOOR P.O., PIN-680702.

BY ADVS. SRI.JOHN NUMPELI (JUNIOR)
SRI.P.V.PAULSON

RESPONDENT:

ASHRAF, AGED 43,
S/O.KUNJUMUHAMMED,
POOLCKAL, KATTOOR VILLAGE,
MUKUNDAPURAM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C) No.17671 of 2007 C

Dated this the 8th day of June, 2007.

JUDGMENT

This writ petition is filed to call for the records relating to Exts.P3 and P4 and to issue a writ of mandamus to the court below not to entertain the second execution petition filed by the respondent.

2. I heard learned counsel for the writ petitioners.

3. The petitioners are the judgment debtors in O.S.No.392/05 on the file of the Munsiff's Court, Irinjalakuda. In execution of the decree, initially a prayer has been made for arresting the judgment debtors and for detaining them in civil prison and thereafter, another prayer was also made to attach the movables belonging to the judgment debtors on the ground that they are attempting to remove it in order to defeat the decree holder from getting the fruits of the decree. Learned counsel for the petitioners submits that execution by more modes may not be entertained.

4. A perusal of Order XXI Rule 21 of the Code of Civil Procedure only gives a discretion to the court to refuse execution, at the same time, against the person and property of the judgment debtor. In other words, the Rule is to proceed in any manner in which the decree holder wants to proceed and the exception is the discretion given to the court on getting judicially satisfied about the non-necessity of execution by both modes.

5. Here, admittedly, only a portion of the amount has been paid by the judgment debtors. It is averred by the decree holder that there is an attempt made by the judgment debtors to remove the property so as to defeat the decree holder. So, the permission granted by the Executing Court to proceed simultaneously against the property as well as the person cannot be found fault with.

6. Learned counsel for the writ petitioners then submits that his clients are intending to pay off the entire liability and are also prepared to file an undertaking affidavit to the effect that they will not transfer or do away with the

schedule of movables sought to be attached. As far as the decree holder is concerned, the right should be preserved and no harm shall be made if a reasonable time is granted to the judgment debtors to wipe off the liability.

Therefore, the writ petition is disposed of as follows:

> ***(a) The writ petitioner viz., the judgment debtor is directed to file an undertaking affidavit before the court below that he will not transfer or destroy the movables, which are appended in the schedule of attachment, until further orders from that court.***
>
> ***(b) He shall wipe off the liability of the decree debt in three equal monthly instalments, commencing from 09.07.2007.***
>
> ***(c) If he commits breach of payment of any one of the instalments, the benefits given under this order shall remain automatically forfeited and the decree holder will be at liberty perfectly to proceed against the person as well as the property of the judgment debtor.***

Sd/-

(M.N.KRISHNAN)
JUDGE

sk/

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P.S. To Judge.